

CAPE COD COMMISSION

3225 MAIN STREET
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BARNSTABLE, MA 02630
508-362-3828
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Date: May 11, 1995
To: Edward McCarthy, Joseph Nisby, and Nancy A.
DeDecko as Trustee of M.M.M. Realty Trust

From: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Cape Cod Commission
Regulations of General Application, Chapter A, Section
3

Project #: TR95003
Atkins Heights
1 through 15 Atkins Road
Sandwich MA 02563

Lot/Plan: Deed Book 2165 Pages 25 & 26

Owners: Edward McCarthy, Joseph Nisby, and Nancy A.
DeDecko as Trustees of M.M.M. Realty Trust

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of M.M.M. Realty Trust, Edward McCarthy, Joseph Nisby, and Nancy A. DeDecko as Trustees, pursuant to Sections 12 and 13 of the Cape Cod Commission Act and under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10, as amended, for the Atkins Heights residential subdivision.

PROJECT DESCRIPTION

The proposed project consists of a 22-lot subdivision plan on 34.73 acres located off Atkins Road, past Crestview Drive, near Route 6. Prior to the construction of Route 6, Atkins Road was a through street from Route 6A to Quaker Meetinghouse Road. The construction of Route 6 created a dead

end on the northerly portion of Atkins Road which passes into this site. The road is not paved, has not been maintained and offers poor access.

PROCEDURAL HISTORY

The Cape Cod Commission received a request for a Jurisdictional Determination from the Sandwich Planning Board on December 29, 1994. The application was deemed complete on January 9, 1995. A duly noticed public hearing pursuant to Section 5 of the Act was held by an authorized Subcommittee of the Commission on the Jurisdictional Determination request on January 20, 1995 at the Sandwich Public Library, Sandwich MA. At the close of the public hearing the Subcommittee voted unanimously that the proposed project qualifies as a mandatory referral under the DRI threshold contained in Section 3(c) of the Cape Cod Commission DRI enabling regulations.

On March 14, 1995, Commission Counsel wrote to Attorney Wainwright to clarify the method of withdrawal of the project. The letter stated that if the applicant did not choose to participate in a DRI review it would be necessary to totally withdraw the project at the local level, or a procedural denial, without prejudice, would be recommended to the full Commission.

On March 15, 1995, a duly noticed public hearing for the Atkins Heights project was opened at 10:01 A.M. and closed at 10:03 A.M. Because an application had not been received from the applicant, the Commission was unable to notify abutters. No presentations were made, no testimony was taken and no substantive action was taken regarding the project.

On March 28, 1995, the Commission staff sent a letter to Attorney Wainwright reminding him that the application for Atkins Heights was still incomplete and that unless a complete application or a letter of withdrawal was submitted to the Commission, it would be necessary to schedule a public hearing for a procedural denial for Thursday, May 11, 1995 before the full Commission.

MATERIALS SUBMITTED FOR THE RECORD

An application, abutters list, supporting documentation and exhibits, and all other submittals required and requested of the applicant have not been submitted to the Commission. The material on file as part of the Atkins Heights Jurisdictional Determination JD#94018, notice of the public hearing and minutes of the public hearing are incorporated into the record by reference.

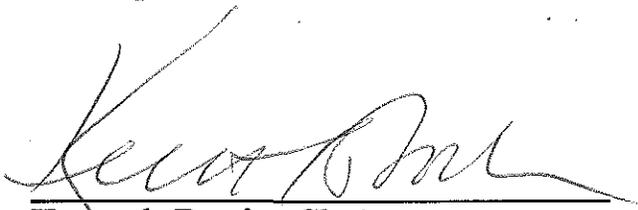
FINDINGS

The Cape Cod Commission makes the following findings:

- 1) On January 20, 1995, the Cape Cod Commission conducted a Jurisdictional Determination hearing and determined that the proposed subdivision called Atkins Heights qualifies as a Development of Regional Impact.
- 2) A letter of withdrawal was not submitted to the Town of Sandwich or the Cape Cod Commission.
- 3) An application for DRI review, including abutters list, plans, and exhibits, was not submitted to the Commission. Since no abutters list was submitted, the Commission could not hold a properly noticed public hearing to consider the project.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact application of M.M.M. Realty Trust, Edward McCarthy, Joseph Nisby, and Nancy A. DeDecko as Trustees, for the Atkins Heights residential subdivision pursuant to Section 12 and 13 of the Cape Cod Commission Act .



 Kenneth Brock , Chairman

5/11/95

 Date

Commonwealth of Massachusetts

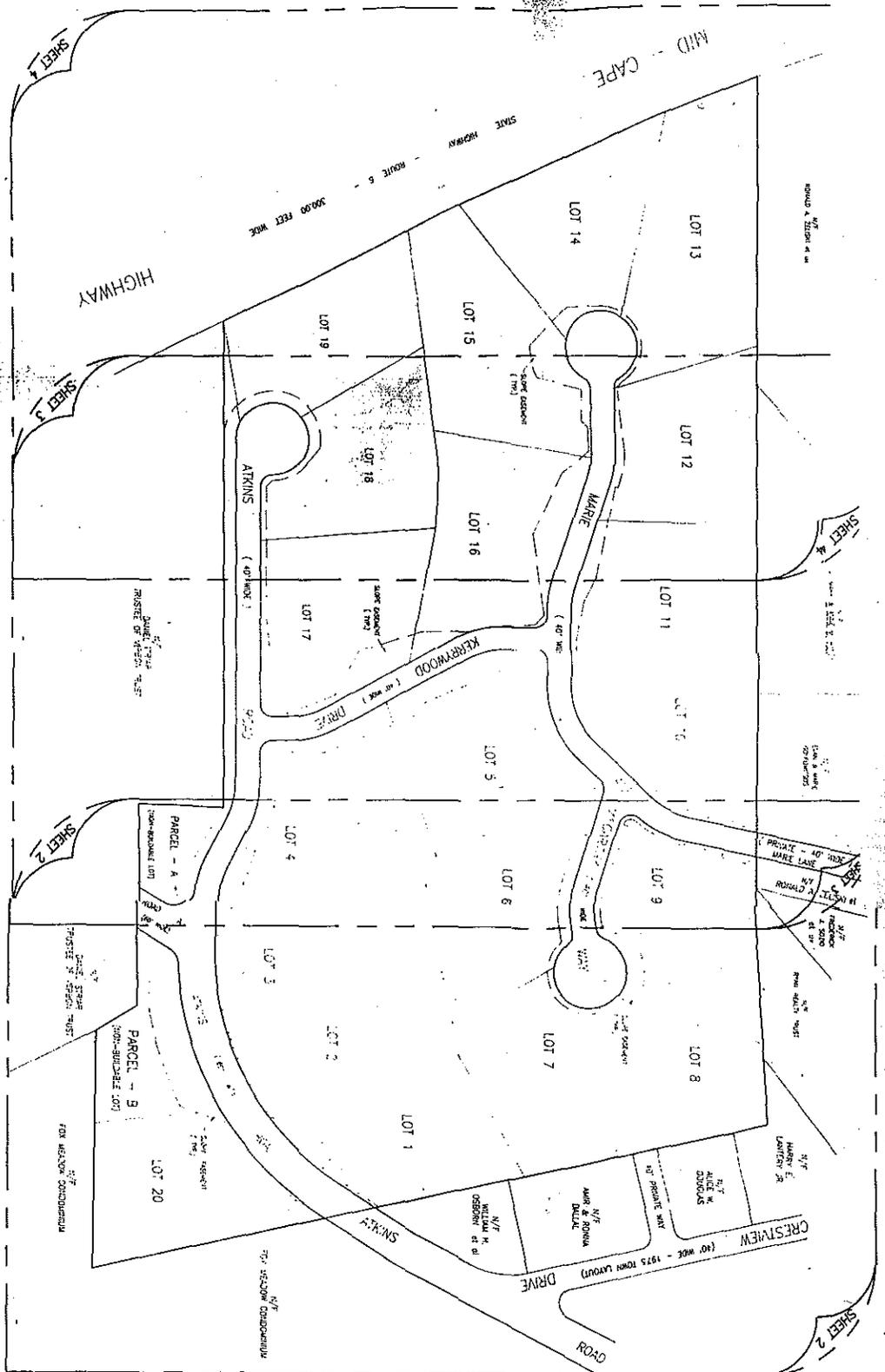
Barnstable, ss.

Subscribed and sworn to before me this 11th day of
May 1995.



 Name, Notary Public

My commission expires:



L-13 PROPERTY IS NOT LOCATED IN THE SANDWICH TOWN OF SANDWICH



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